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sewing machines, defended for fraud of seller's agent, instruction that the measure of damages for misrepresentation of the price at which such machines had been sold was the difference between the price at which they had been sold and the price paid, though not as clear as it 'should have been, held not erroneous as tending to mislead; it in substance telling the jury that the measure of damages was the difference between the smaller price and the price fixed in the contract with the buyer.

**10. Fraud (§ 59 (2)\*)—Measure of Damages Difference between Value of Goods and Value Had Misrepresentations Been True.**—In an action for the price of sewing machines, defended for fraud of seller's agent, instruction that the measure of damages for false representations regarding other sales, and regarding the assembling of a corps of honest trained salesmen for the buying dealer, was the difference between the value of the machines had the representations been true, and their value under actual conditions, was accurate.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 42, 43.]

**11. Fraud (§ 62\*)—\$2,850 Recovery by Buyer of 150 Sewing Machines for Misrepresentations of Seller's Agent Not Excessive.**—Verdict of \$2,850 awarded the buyer of 150 sewing machines under fraudulent misrepresentations of the seller's agent as to the seller's assistance in disposing of them, etc., held not excessive; the buyer having spent much money and time in endeavoring to sell the machines, and having certainly incurred a loss.

Appeal from Circuit Court, Albemarle County.

Action by the White Sewing Machine Company against the Gilmore Furniture Company. To review judgment for defendant, plaintiff brings error. Affirmed.

*C. W. Allen*, of Charlottesville, *Saml. A. Anderson* and *Allen G. Collins*, both of Richmond, and *White & Long*, of Charlottesville, for plaintiff in error.

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BOWMAN *v.* VIRGINIA STATE ENTOMOLOGIST.

Nov. 18, 1920.

[105 S. E. 141.]

**1. Agriculture (§ 1\*)—Eminent Domain (§ 2 (1)\*)—Cedar Rust Law for Protection of Orchards Valid Exercise of Police Power.**—The Cedar Rust Law, providing for the destruction of red cedar trees to prevent infection of adjacent apple orchards, held valid as enacted by the police power of the state for the protection of the public in-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

terests, as distinguished from the protection of private interests, and as a valid exercise of such power, though it does not allow compensation to the owners of destroyed trees as a matter of right.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 225.]

**2. Agriculture (§ 1\*)—Cedar Rust Law within Police Power to Define Nuisance.**—Red cedar trees harboring a plant which causes the infection of rust in apple orchards, thus falling within the condemnation of Cedar Rust Law, could not have constituted either a public or a private nuisance at common law; but this did not prevent the enactment of the act under the police power.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 230, 231.]

**3. Nuisance (§ 60\*)—Police Power Not Limited to Dealing with Common-Law Nuisances.**—The police power of the state is not limited to dealing with what are nuisances at common law.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 225.]

**4. Constitutional Law (§ 81\*)—Legislature May Not Interfere with Lawful Business on Pretense of Exercising Police Power.**—The Legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual or unnecessary restrictions on lawful occupations in the pretended exercise of the police power; its determination not being final or conclusive, but subject to the supervision of the courts.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 227, 228.]

**5. Constitutional Law (§ 48, 81\*)—Discretion Vested in Legislature in Exercise of Police Power; Presumptions Indulged in Favor of Statute.**—A large discretion is vested in the Legislature to determine what the interests of the public require in the exercise of the police power, also as to what is necessary for the protection of such interests, and every possible presumption is to be indulged in favor of the validity of the statute.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 163, 229.]

**6. Constitutional Law (§ 211\*)—Cedar Rust Law Not Violative of Guaranty of Equal Protection of Laws in Its Special Benefits to Certain Persons.**—That a statute is special in its character, and that certain persons or interests derive special benefit from its operation, apart from the benefits to the general public, does not render it in conflict with the guaranty of the equal protection of the laws contained in Const. U. S. Amend. 14, if all persons subject to it are treated alike under the same conditions, a rule sustaining the validity of the Cedar Rust Law, providing for the destruction of red cedars for the protection of adjacent apple orchards.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 202.]

**7. Constitutional Law (§ 313\*)—Cedar Rust Law Not Providing for Jury Trial Not Violative of Guaranty of Due Process.**—That the Cedar Rust Law, providing for the destruction of red cedar trees for the protection of adjacent apple orchards from infection, does not provide for trial by jury in its enforcement, does not render it invalid as in conflict with the guaranty of due process of law contained in Const. U. S. Amend. 14, and in Const. Va. 1902, § 11; neither the state nor federal Constitution guaranteeing the right of jury trial except where it existed when such Constitutions were adopted.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 9.]

**8. Jury (§ 12 (2)\*)—Constitutional Provision without Application to Cases Where No Jury Allowed at Adoption.**—Const. 1902, § 11, providing that in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred, is without application to a class of cases where no jury was allowed at the time such provision was first adopted.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 9.]

**9. Constitutional Law (§ 320\*)—Provisions of Cedar Rust Law Afford Due Process to Owner of Trees.**—The provisions of Cedar Rust Law, providing for the destruction of red cedar trees for protection from infection of adjacent apple orchards, which call for preliminary investigation and ascertainment of the material facts by the state entomologist, etc., afford the due process of law to the owners of cedar trees which is guaranteed by Const. Va. 1902, § 11, and Const. U. S. Amend. 14.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 207.]

**10. Statutes (§ 107 (1)\*)—Title of Cedar Rust Law Not Violative of Constitution.**—Cedar Rust Law, entitled "An act providing for the control and eradication of the plant disease commonly known as 'orange' or 'cedar rust' in the magisterial districts of the counties of this state where said disease is prevalent," held not invalid, under Const. 1902, § 52, providing no law shall embrace more than one subject, which shall be expressed in its title; all subjects dealt with having a natural connection with and being reasonably necessary for the single object of the statute expressed in the title.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 749.]

**11. Statutes (§ 61\*)—Presumed to Have Been Enacted in Accordance with Constitutional Requirements.**—Every statute is presumed to have been enacted in accordance with constitutional requirements until the contrary is made to appear.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 163.]

**12. Constitutional Law (§ 65\*)—Statutes (§ 93 (1)\*)—Cedar Rust Law Not Invalid on Account of Local Option Feature.**—The Cedar

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Rust Law, providing for the destruction of red cedar trees for the protection from infection of adjacent apple orchards, is not invalid on account of its local option feature contained in section 9; the classification of localities being necessary and proper, and the act not being a delegation of legislative power.

**13. Agriculture (§ 9½\*)—New, Vol. 4 Key-No. Series—In Proceedings under Cedar Rust Law, Evidence Showing Menace of the Trees Involved to All Orchards Admissible.**—In proceedings by the state entomologist under the Cedar Rust Law for the destruction of certain red cedar trees for protection of adjacent apple orchards, the trial court did not err in admitting and considering, over the objection of the owners of the trees, evidence of the circumstances relative to the possibility of infection which in fact existed in the immediate locality in question and in other adjacent localities in the Valley and Piedmont sections of the state, which rendered the red cedar trees involved in the proceeding a menace to the apple orchard industry, not only to the orchards within one mile of them, as specified by the statute, but to all such orchards within the district and county and sections of the state where cedar trees had not been destroyed.

**14. Appeal and Error (§ 170 (2)\*)—Constitutional Questions Not Raised in Proceedings against Owners of Cedar Trees under the Cedar Rust Law.**—In proceedings under the Cedar Rust Law for the destruction of certain red cedar trees as a menace to adjacent apple orchards, question whether the act is invalid in the provision of section 8 for the annual assessment of and judgment by the court against the owners of certain apple orchards for various amounts to provide a fund to reimburse the county for all damages, etc., does not arise on appeal of the owners of cedar trees who have been guaranteed the payment of their damages by certain persons, irrespective of the liability of the owners of orchards, while the statute provides for the payment of such damages out of the general county fund, and the county and orchard owners have never raised such question.

Error to Circuit Court, Shenandoah County.

Two proceedings by the Virginia State Entomologist against Rebecca Bowman and against Rebecca Bowman and others. From judgment for plaintiff, defendants bring error. Affirmed.

The material facts are referred to in the opinion below.

*Curry & Curry*, of Staunton, *C. W. Bennick*, and *C. B. Guyer*, of Strasburg, for plaintiffs in error.

*John R. Saunders*, *Atty. Gen.*, *Ward & Larrick*, of Winchester, and *Tavenner & Bauserman*, of Woodstock, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.